



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Capitol Contractors, Inc. and Baker Roofing Company

**File:** B-248944; B-248944.2

**Date:** October 22, 1992

Joel S. Rubinstein, Esq., Sadur, Pelland & Rubinstein, for Capitol Contractors, Inc., and Michael J. Gardner, Esq., Clark & Stant, P.C., for Baker Roofing Company, the protesters.  
Amy J. Brown, Esq., and Kenneth E. Kendell, Esq., General Services Administration, for the agency.  
Scott H. Riback, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

1. Protest that agency improperly refused to allow low bidder to correct alleged mistake in bid is denied where record shows that protester's evidence, while demonstrating that firm had made a mistake in its bid, did not clearly or convincingly show what the firm intended to bid.

2. Protest challenging agency's negative responsibility determination is denied where protester fails to show that agency acted in bad faith or that determination was unreasonable in light of firm's overall financial posture.

### DECISION

Capitol Contractors, Inc. and Baker Roofing Company protest the actions of the General Services Administration (GSA) in connection with the award of a contract under solicitation for offers (SFO) No. GS-03P-92-DXC-0034. The SFO was issued to acquire a replacement roof for the federal office building in Richmond, Virginia. Capitol argues that GSA erroneously refused to permit it to correct a mistake in its bid. Baker argues that the agency improperly found it to be nonresponsible.

We deny the protests.

The SFO called for fixed-price, lump-sum bids for a basic requirement and for certain optional work, with award to be made to the responsive, responsible firm submitting the lowest aggregate price for the basic and optional items. In

response to the solicitation, GSA received four bids, with Capitol submitting the apparent low bid and Baker submitting the apparent second low bid.

#### CAPITOL'S PROTEST

After reviewing the bids, the contracting officer determined that Capitol's bid was significantly lower than any of the other bids received, and also was significantly lower than the government's estimate; accordingly, he requested that Capitol verify its bid in writing. In response, Capitol stated that it had mistakenly failed to include a subcontractor quote for providing lightweight concrete fill in its bid. Capitol therefore requested that GSA permit it to increase its bid by \$67,600, comprised of \$51,964 in subcontractor costs and \$15,636 in overhead and profit. In support of its claim, Capitol provided GSA with an affidavit from its estimator in which he stated that the error occurred because of his inadvertent failure to include the subcontractor's quote in his calculations. Capitol also provided its bid estimate sheets, a bid "recap" sheet, and a revised bid recap sheet which included the additional amount for its subcontractor and its recalculated overhead and profit.

The contracting officer reviewed Capitol's submission and determined that, although the firm had provided evidence sufficient to show that a mistake had been made, it had not shown that the subcontractor quote provided by Capitol was the one which the firm had intended to include in its bid. This conclusion was based on the fact that Capitol's estimate sheets, while listing the lightweight concrete work as an item in the bid, did not contain any price therefor. In addition, the subcontractor's quote had been sent by facsimile transmission but did not contain any indication of the date on which it had been sent or the party who had sent it. The contracting officer informed Capitol of his conclusions by letter.

In response to the contracting officer's letter, Capitol submitted a copy of another subcontractor's quote for the lightweight concrete fill which was higher than the quote it had provided earlier. Capitol stated that it had intended to use the lower of the two quotes. In addition, Capitol submitted a letter from its subcontractor explaining that the firm's telefacsimile machine did not encode the date of transmission for outgoing facsimiles. The contracting officer reviewed these additional materials and concluded that Capitol's submissions still did not clearly show what the firm had originally intended to bid. He therefore denied Capitol's request to correct its bid, and the firm protested to our Office.

Capitol argues that the agency erred in not allowing it to correct its bid because it provided the agency with clear and convincing evidence of its mistake and its intended bid. Specifically, Capitol maintains that its bid estimate sheets, which contain a line designated "lightweight concrete," show that the firm intended to include some amount in its bid for this portion of the work; its subcontractor quotes clearly demonstrate the amount it intended to bid for the lightweight concrete fill portion of the contract; and that its estimator's affidavit establishes that it was his inadvertent failure to record the subcontractor's quote on the bid estimate sheets that led to the error in the firm's final bid.

A bidder seeking upward correction of its bid before award must submit clear and convincing evidence showing that a mistake was made, how the mistake occurred and the intended price. Federal Acquisition Regulation (FAR) § 14.406-3(a). We will not disturb an agency's conclusion as to whether the evidence of the mistake and the intended bid meets the clear and convincing standard unless it lacks a reasonable basis. L.F. Leiker Constr. Co., Inc., B-238496, May 4, 1990, 90-1 CPD ¶ 453.

We agree with GSA's conclusion that the evidence submitted by Capitol was insufficient to show the firm's intended bid. As noted above, Capitol's estimate sheets contained a line designated "lightweight concrete work" but did not contain any pricing for the work. This designation in its estimate sheets is evidence that Capitol was aware that this work was necessary in connection with performance of the contract, but the absence of any price entry on the worksheets leaves an evidentiary void as to whether Capitol intended to incorporate a particular subcontractor quote in its bid. Although Capitol claims otherwise, this void leaves open the possibility that Capitol purposely omitted a price for the lightweight concrete work (e.g., to reduce its bid price), or that the firm intended to use a subcontractor quote other than the two that have been presented. Absent evidence clearly showing that Capitol intended to incorporate a certain amount for the work, the agency reasonably concluded that Capitol had not met the "clear and convincing" standard, and denied its request for upward correction.

#### BAKER'S PROTEST

While Capitol's protest was pending in our Office, the contracting officer requested that a preaward survey be conducted on Baker by GSA's Credit and Finance office. By two letters, the Credit and Finance office requested that Baker complete and return a GSA form 527, which calls for contractor qualifications and financial information. After receiving and reviewing Baker's submission as well as

various materials obtained on its own (such as a Dunn & Bradstreet report), the Credit and Finance office recommended to the contracting officer that Baker be found nonresponsible. This recommendation was based on the Credit and Finance office's conclusions regarding Baker's financial resources, which were found to be inadequate, as well as information contained in the Dunn & Bradstreet report which showed that the firm had a slow payment history with its suppliers.

The contracting officer accepted the recommendation of the Credit and Finance office and found Baker nonresponsible. He then referred his nonresponsibility determination to the Small Business Administration (SBA) for consideration under the certificate of competency (COC) program because Baker had certified in its bid that it was a small business. The SBA ultimately declined to evaluate Baker's responsibility on grounds that, notwithstanding the firm's certification, Baker was not a small business for purposes of the acquisition. The contracting officer then relied on his own nonresponsibility determination and made award to the third low bidder. Baker's protest followed.

Baker argues that the contracting officer improperly determined that it was nonresponsible. It alleges that it in fact has adequate financial resources to perform the contract. In support of this latter argument, Baker has provided our Office with materials it furnished to GSA (including the COC application, and documents such as annual financial statements), which it claims were not fairly considered. Baker contends that the adequacy of its financial resources also is demonstrated by its ability to obtain bonding for the subject contract. Finally, Baker contends that it is currently making a profit and, to the extent that it is carrying a large debt burden (one of the reasons cited by GSA's Credit and Finance office for recommending against award to Baker), the debt is old and is secured by assets outside the corporation.

In order to be found responsible, a firm must, among other things, affirmatively demonstrate that it has sufficient financial resources to perform the contract, or the ability to obtain them. FAR §§ 9.104-1 and 9.104-3 (b). Absent such a showing, the FAR requires the contracting officer to determine a firm nonresponsible. FAR § 9.103 (b). In making a responsibility determination, a contracting officer has considerable discretion, which we will not question absent a showing that the agency has acted in bad faith or that its determination lacked a reasonable basis.  
Construcciones Electromecanicas, S.A., B-242656 et al.,  
May 8, 1991, 91-1 CPD ¶ 448.

We have reviewed the materials furnished by Baker and find no basis to question the contracting officer's determination of nonresponsibility. GSA's Credit and Finance office made its recommendation of nonresponsibility based on a variety of factors, including Baker's lack of available working capital, deficit retained earnings, negative net worth, interim losses for 1992 and heavy debt burden. The Credit and Finance office also informed the contracting officer that Dunn & Bradstreet reported that Baker had a slow history of repayment with its suppliers and that at least one vendor will only do business with the firm on a cash on delivery basis. Baker has furnished no evidence which would bring into question the conclusions of the Credit and Finance office and these grounds provided a reasonable basis for the contracting officer's determination of nonresponsibility.

Regarding the firm's lack of available working capital, GSA's Credit and Finance office found that approximately 93 percent of the firm's working capital was centered in accounts receivable and inventory, with very little cash on hand to perform the contract. An examination of the firm's balance sheet for the first 5 months of 1992 shows that, in fact, only 1.14 percent of Baker's current assets are in the form of cash, with the balance primarily in the form of accounts receivable and inventory; the remainder of the firm's resources are in fixed assets such as facilities, tools and equipment. The record also contains a spreadsheet prepared by the firm in connection with its COC application which shows that during the 5 months of performance for this contract, Baker would be operating at a cash-on-hand deficit for 4 months, and would rely entirely on progress payments to finance this contract. Baker has offered no evidence to show that the agency's conclusion regarding its lack of working capital was either erroneous or unreasonable; indeed, Baker does not even substantively respond to this concern in its submissions to our Office.

Regarding the firm's retained earnings posture, an examination of Baker's balance sheets for 1990, 1991, and 1992 show that the firm has had a deficit in retained earnings in the six figure range, with a slight increase in its negative shareholder's equity figure for this year. Baker's balance sheet for the first part of 1992 shows that this increase in negative shareholder's equity is due to the fact that Baker has been operating at a loss for at least a portion of this year. These factors support the agency's conclusion that Baker currently displays a negative net worth and, again, Baker has offered no evidence to rebut the agency's concerns regarding the firm's retained earnings posture.

Regarding the firm's debt burden, Baker essentially argues that this should be ignored, given that much of its current debt was incurred some 5 years ago, it made a profit during 1990 and 1991 and the debt is secured by assets owned outside of the corporation. These facts, however, do not show that the debt is nonexistent or that it is not a current liability of the corporation affecting its ability to obtain adequate financial resources for purposes of performing this contract. The record shows in this regard that GSA contacted the firm's bank and found that, while Baker had a satisfactory relationship with its bank, it was not revealed that Baker had a line of credit available to it. This tends to suggest that Baker's ability to obtain contract financing may be affected by its debt burden, and Baker has not shown that it is otherwise able to obtain adequate the financing necessary to perform this contract. As noted above, the record in fact shows that Baker would have been relying entirely on progress payments to finance the contract and would have been running at a cash deficit during most of the contract's period of performance. The record thus shows that GSA's concerns in this regard were well-founded.<sup>1</sup>

Finally, Baker takes issue with the Finance and Credit office's statement in its preaward survey that a Dunn & Bradstreet report showed the firm to have a slow payment history with its vendors. Baker alleges that this statement is erroneous and that at this time it is current with its creditors; in support of its position, Baker has furnished letters from three of its suppliers stating that Baker has a satisfactory payment record with them. An examination of the firm's COC application materials, however, shows that Baker has numerous creditors in addition to the three furnishing letters, and the record contains no information regarding Baker's payment history with these firms. Consequently, there is nothing to show that the information obtained from Dunn & Bradstreet was inaccurate. See generally Harvard Interiors Mfg. Co., B-247400, May 1, 1992, 92-1 CPD ¶ 413. We therefore have no basis to conclude that the agency's nonresponsibility determination was founded

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<sup>1</sup>We also note that Baker's ability to obtain bonding is insufficient, without more, to show that it has adequate financial resources. The fact that a surety found Baker's financial condition adequate for the surety's purpose does not compel the agency to reach the same conclusion.

upon inaccurate information relating to Baker's payment history with its vendors, or that GSA was unreasonable in concluding that Baker was nonresponsible for purposes of performing the contract.

The protests are denied.

*Robert F. Hinchman*  
for James F. Hinchman  
General Counsel